

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

AVENTIS SYSTEMS, INC., a Georgia
corporation; and HESAM LAMEI, an individual,

Defendants.

No.

COMPLAINT FOR DAMAGES
AND EQUITABLE RELIEF

Plaintiff Microsoft Corporation (“Microsoft”) files this Complaint against Defendant
Aventis Systems, Inc. and Hesam Lamei (“Defendants”), alleging as follows:

I. INTRODUCTION

1. This is an action for copyright infringement, trademark infringement, false
advertising activities, unfair or deceptive acts or practices under the Washington Consumer
Protection Act, Washington State common law unfair competition, imposition of a constructive
trust, and an accounting of Defendant’s ill-gotten gains.

2. On information and belief, Defendant Aventis, under the direct supervision of its
CEO, President, and sole shareholder, Defendant Hesam Lamei, installed and activated
unlicensed Microsoft software on over one thousand computer and server systems using
unauthorized product keys, including product activation keys known to be abused, out-of-
region, and otherwise restricted for use.

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3. On information and belief, Defendants subsequently distributed those systems to customers who were unaware they were receiving pirated and unlicensed software and were harmed as a result by Defendants' misconduct.

4. On information and belief, Defendants' software piracy was a systematic part of its business operations beginning in at least 2012.

II. PARTIES

5. Microsoft is a Washington corporation with its principal place of business in Redmond, Washington. Microsoft develops, markets, distributes, and licenses computer software, among other products and services.

6. On information and belief, Defendant Aventis Systems, Inc. is a Georgia corporation based in Atlanta, Georgia. Aventis specializes in information technology hardware and software for small and medium size businesses, offering new and refurbished servers, storage units, desktops, and laptops, as well as technical support and installation services. Aventis also sells a wide array of software from Microsoft. Aventis advertises itself as offering "on-site installation services for customers across the continental U.S." At various times relevant to this complaint, Aventis was and is in possession or control of the following Internet Protocol ("IP") addresses and/or ranges: 50.73.80.184–.185, 67.211.23.130, and 67.211.23.134 (the "IP Addresses"). The IP Addresses were used by Aventis in furtherance of the unlawful conduct alleged herein.

7. On information and belief, Defendant Hesam Lamei is a Georgia resident, the founder, CEO, President and sole owner of Aventis, and owns, operates, supervises, and/or controls its conduct and business. On information and belief, Mr. Lamei either (a) personally participated in and/or (b) had the right and ability to supervise, direct, and control the wrongful conduct alleged in this Complaint, and derived a direct financial benefit from that wrongful conduct. Mr. Lamei is therefore subject to liability for the wrongful conduct alleged herein under principles of secondary liability, including, without limitation, respondeat superior, vicarious liability, and/or contributory infringement.

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III. JURISDICTION & VENUE

8. The Court has subject matter jurisdiction over Microsoft's claims for trademark infringement, copyright infringement, and related claims pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a). The Court also has subject matter jurisdiction under 28 U.S.C. § 1332 because on information and belief, this action is between citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs. The Court has jurisdiction over the state law claims under 28 U.S.C. § 1367.

9. The Court has personal jurisdiction over Defendants because they purposefully directed their unlawful activities at Washington, and Microsoft's claims arise from those activities. *See, e.g., Microsoft v. Mountain West Computers*, No. 2:14-cv-01772-RSM, 2015 WL 4479490, at *4–*8 (W.D. Wash. July 22, 2015). As a routine and regular part of their business activities, Defendants activated and attempted to activate more than a thousand copies of Microsoft software, much of which was unlicensed. During the software activation process, Defendants contacted Microsoft activation servers in Washington more than 17,500 times from 2012 to January 2016, and transmitted detailed information to those servers in order to activate the software. Defendants' contact with Microsoft's activation servers was voluntary, intentional, and comprised a routine part of Defendants' installation and sale of software to the public. In addition, Defendants expressly aimed their conduct at Washington because they (1) had actual or constructive knowledge of Microsoft's intellectual property rights (including Microsoft's registered copyrights and trademarks); (2) had actual or constructive knowledge of Microsoft's residence in Washington where it controls its exclusive rights in its trademarks and copyrights; (3) acted, at a minimum, with willful blindness to or in reckless disregard of Microsoft's rights, and in reckless disregard of the likelihood that they were infringing Microsoft's intellectual property; and (4) knew or should have known that their conduct would cause harm to Microsoft in Washington because it is foreseeable that infringement of Microsoft's rights would cause harm likely to be suffered in Washington, the state of its residence, incorporation, and headquarters. Further, in or about March 2016, Defendants sold

1 and sent a refurbished (i.e. “Aventis Systems Certified Reconditioned”) computer system to
2 Microsoft’s third party investigator who is located in Washington State.

3 10. Venue is proper in this Court pursuant to 28 U.S.C. § 1400(a) because
4 Defendants are subject to personal jurisdiction in the Western District of Washington. *See*
5 *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124 (9th Cir. 2010). Venue is also
6 proper in this district pursuant to 28 U.S.C. 1391(b) because a substantial part of the events
7 giving rise to the claims occurred in the Western District of Washington.

8 11. Pursuant to Local Civil Rule 3(d), intra-district assignment to the Seattle
9 Division is proper because the claims arose in this Division, where (a) Microsoft resides, (b)
10 the injuries giving rise to suit occurred, and (c) Defendants directed their unlawful conduct.

11 IV. FACTS COMMON TO ALL CLAIMS

12 A. The Global Problem of Software Piracy

13 12. Software developers lose billions of dollars in annual revenue from software
14 piracy, namely, the unauthorized and unlawful copying, downloading, and distributing of
15 copyrighted and trademarked software and related components. In 2013, the commercial value
16 of pirated software in the United States was in excess of \$9.7 billion. *See* Business Software
17 Alliance, *The Compliance Gap: Global Software Survey* (June 2014),
18 http://globalstudy.bsa.org/2013/downloads/studies/2013GlobalSurvey_Study_en.pdf.

19 13. One prominent form of software piracy is known as “hard-disk loading,” the
20 unauthorized commercial copying and installation of infringing software on devices which are
21 sold in competition with, and often for lower prices than, devices pre-installed with legally
22 licensed copies of software.

23 14. Software developers, like Microsoft, are not the only victims of software piracy.
24 Consumers are also victims, as they are often deceived by distributors of pirated software who
25 go to great lengths to make the software appear genuine. These customers may unwittingly
26 expose themselves to security risks associated with the use of pirated software. *See* Federal
27 Bureau of Investigation, *Consumer Alert: Pirated Software May Contain Malware*, Aug. 1,

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2013, at <http://www.fbi.gov/news/stories/2013/august/pirated-software-may-contain-malware/> (noting the relatively greater risk that pirated software is infected with malicious software, or “malware,” which can be used to record keystrokes and thus capture sensitive information such as user names, passwords, and Social Security numbers).

B. Microsoft’s Software and Intellectual Property

15. Microsoft develops, advertises, markets, distributes, and licenses a number of computer and server software programs. Microsoft’s software programs are recorded on distributable media, such as DVDs, or are made available for download through various authorized distribution channels.

16. Microsoft holds a number of valid copyrights in its computer and server software, and it has duly and properly registered those copyrights with the United States Copyright Office, including without limitation:

a. **Microsoft Windows 7:** Microsoft has developed, advertises, markets, distributes and licenses a computer operating system called Microsoft Windows 7 (“Windows 7”). Windows 7 is available in a number of different versions including, but not limited to, Windows 7 Ultimate, Windows 7 Professional, Windows 7 Home Premium, and Windows 7 Enterprise. Microsoft holds a valid copyright in Windows 7 Ultimate, the most expansive version of Windows 7, and Microsoft’s copyright in Windows 7 Ultimate encompasses all other versions of Windows 7. Microsoft’s copyright in Windows 7 Ultimate was duly and properly registered with the United States Copyright Office, bearing the number TX 7-009-361.

b. **Microsoft Windows 8:** Microsoft has developed, advertises, markets, distributes and licenses a computer operating system called Microsoft Windows 8 (“Windows 8”). Windows 8 is available in a number of different versions including, but not limited to, Windows 8 Ultimate, Windows 8 Professional, Windows 8 Home Premium, and Windows 8 Enterprise. Microsoft holds a valid copyright in Windows 8 Ultimate, the most expansive version of Windows 8, and Microsoft’s copyright in Windows 8 Ultimate encompasses all

1 other versions of Windows 8. Microsoft's copyright in Windows 8 Ultimate was duly and
 2 properly registered with the United States Copyright Office, bearing the number TX 7-601-008.

3 c. **Microsoft Windows 8.1:** Microsoft has developed, advertises, markets,
 4 distributes and licenses a computer operating system called Microsoft Windows 8.1 ("Windows
 5 8.1"). Windows 8.1 is available in a number of different versions including, but not limited to,
 6 Windows 8.1 Ultimate, Windows 8.1 Professional, Windows 8.1 Home Premium, and
 7 Windows 8.1 Enterprise. Microsoft holds a valid copyright in Windows 8.1 Ultimate, the most
 8 expansive version of Windows 8.1, and Microsoft's copyright in Windows 8.1 Ultimate
 9 encompasses all other versions of Windows 8.1. Microsoft's copyright in Windows 8.1
 10 Ultimate was duly and properly registered with the United States Copyright Office, bearing the
 11 number TX 7-740-672.

12 d. **Microsoft Windows 10:** Microsoft has developed, advertises, markets,
 13 distributes and licenses a computer operating system called Microsoft Windows 10 ("Windows
 14 10"). Windows 10 is available in a number of different versions including, but not limited to,
 15 Windows 10 Professional, Windows 10 Enterprise and Windows 10 Home. Microsoft holds a
 16 valid copyright in Windows 10 Pro, the most expansive version of Windows 10, and
 17 Microsoft's copyright in Windows 10 Ultimate encompasses all other versions of Windows 10.
 18 Microsoft's copyright in Windows 10 Ultimate was duly and properly registered with the
 19 United States Copyright Office, bearing the number TX 8-058-526.

20 e. **Microsoft Office 2010:** Microsoft has developed, advertises, markets,
 21 distributes, and licenses a suite of productivity software for business, home, and educational
 22 use called Microsoft Office 2010 ("Office 2010"). Office 2010 is available in a number of
 23 different versions, each of which includes certain combinations of products, programs, and
 24 features. Versions of Office 2010 include, but are not limited to, Office Professional 2010,
 25 Office Professional Home and Business 2010, Office Home and Business 2010, Office Home
 26 and Student 2010, Office Professional Academic 2010, and Office Professional Plus 2010.
 27 Microsoft holds a valid copyright in Office Professional Plus 2010, the most expansive version

1 of Office 2010. As a result, Microsoft's copyright in Office Professional Plus 2010
2 encompasses all other versions of Office 2010. Microsoft's copyright in Office Professional
3 Plus 2010 was duly and properly registered with the United States Copyright Office, bearing
4 the number TX 7-151-840.

5 f. **Microsoft Office 2013:** Microsoft has developed, advertises, markets,
6 distributes, and licenses a suite of productivity software for business, home, and educational
7 use called Microsoft Office 2013 ("Office 2013"). Office 2013 is available in a number of
8 different versions, each of which includes certain combinations of products, programs, and
9 features. Versions of Office 2013 include, but are not limited to, Office Professional 2013,
10 Office Professional Home and Business 2013, Office Home and Business 2013, Office
11 Professional Plus 2013, and Office Home and Student 2013. Microsoft holds a valid copyright
12 in Office Professional Plus 2013, the most expansive version of Office 2013. As a result,
13 Microsoft's copyright in Office Professional Plus 2013 encompasses all other versions of
14 Office 2013. Microsoft's copyright in Office Professional Plus 2013 was duly and properly
15 registered with the United States Copyright Office, bearing the number TX 7-649-882.

16 g. **Microsoft Office 365:** Microsoft has developed, advertises, markets, distributes,
17 and licenses a suite of productivity software for business, home, and educational use called
18 Microsoft Office 365 ("Office 365"). Office 365 is available in a number of different versions,
19 each of which includes certain combinations of products, programs, and features. Versions of
20 Office 365 include, but are not limited to, Office 365 Business, Office 365 Business Essentials,
21 Office 365 Business Premium, Office 365 ProPlus, Office 365 Enterprise E1, Office 365
22 Enterprise E3, Office 365 Enterprise E5, Office Professional 2016, Office Professional Home
23 and Business 2016, Office Home and Business 2016, Office Professional Plus 2016, and Office
24 Home and Student 2016. Microsoft holds a valid copyright in Office 365 ProPlus 2016, the
25 most expansive version of Office 365. As a result, Microsoft's copyright in Office 365 ProPlus
26 2016 encompasses all other versions of Office 365 and Office 2016. Microsoft's copyright in
27

Office 365 ProPlus was duly and properly registered with the United States Copyright Office, bearing the number TX 8-097-602.

h. **Microsoft Windows Server 2008:** Microsoft has developed, advertises, markets, distributes, and licenses a suite of server operating systems for business and educational use called Microsoft Windows Server 2008 (“Server 2008”). Server 2008 is available in a number of different versions, each of which include certain combinations of products, programs, and features. Versions of Server 2008 include, but are not limited to, Server Essentials 2008, Server Standard 2008, Server Standard 2008 R2, Server Enterprise 2008, Server Datacenter 2008, and Server Datacenter 2008 R2. Microsoft holds a valid copyright in Server Enterprise 2008, the most expansive version of Server 2008. As a result, Microsoft’s copyright in Server Enterprise 2008 encompasses all other versions of Server 2008. Microsoft’s copyright in Server Enterprise 2008 was duly and properly registered with the United States Copyright Office, bearing the number TX 6-880-740.

i. **Microsoft Windows Server 2012:** Microsoft has developed, advertises, markets, distributes, and licenses a suite of server operating systems for business and educational use called Microsoft Windows Server 2012 (“Server 2012”). Server 2012 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Server 2012 include, but are not limited to, Server Essentials 2012, Server Standard 2012, Server Standard 2012 R2, Server Enterprise 2012, Server Datacenter 2012, and Server Datacenter 2012 R2. Microsoft holds a valid copyright in Server Standard 2012, the most expansive version of Server 2012. As a result, Microsoft’s copyright in Server Standard 2012 encompasses all other versions of Server 2012. Microsoft’s copyright in Server Standard 2012 was duly and properly registered with the United States Copyright Office, bearing the number TX 7-622-123.

True and correct copies of the Copyright Registration Certificates for a – i above are attached as *Exhibits 1 – 9*, respectively.

1 17. Microsoft has also duly and properly registered a number of trademarks and
2 service marks in the United States Patent and Trademark Office on the Principal Register,
3 including without limitation:

4 a. "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236, for
5 computer programs and computer programming services;

6 b. "MICROSOFT (STYLIZED) AND DESIGN," Trademark and Service Mark
7 Registration No. 4,552,363, for computer programs and computer programming services;

8 c. "MICROSOFT DESIGN (Color)," Trademark and Service Mark Registration
9 No. 4,560,827, for computer operating system programs and utilities, etc.;

10 d. "FLAG DESIGN TWO (B/W)," Trademark Registration No. 2,738,877, for
11 computer software;

12 e. "FLAG DESIGN TWO (COLOR)," Trademark Registration No. 2,744,843, for
13 computer software;

14 f. "FLAG DESIGN 2012," Trademark Registration No. 4,400,958, for computer
15 software;

16 g. "WINDOWS," Trademark Registration No. 1,872,264 for computer programs
17 and manuals sold as a unit;

18 h. "WINDOWS 8 PACKAGING," Trademark Registration No. 4,476,005, for
19 computer operating system software and programs;

20 i. "MICROSOFT OFFICE," Trademark Registration No. 3,625,391, for computer
21 productivity software;

22 j. "OFFICE 2010 DESIGN," Trademark Registration No. 4,029,299, for computer
23 productivity software; and

24 k. "OFFICE 2012 DESIGN," Trademark Registration No. 4,459,826, for computer
25 productivity software;

26 l. "OFFICE (WITH OFFICE 2012 DESIGN)," Trademark Registration No.
27 4,456,462, for computer productivity software;

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m. “WINDOWS SERVER,” Trademark Registration No. 3,056,149, for computer operating system programs;

True and correct copies of the Trademark Registrations for a – m above (collectively the “Microsoft Marks”) are attached as *Exhibits 10 – 22*, respectively.

C. Microsoft’s Distribution Channels for Software

18. Microsoft distributes its software through a number of distribution channels, including the Original Equipment Manufacturer (OEM), volume and academic licensing, subscriptions, and refurbisher channels.

19. The Original Equipment Manufacturer (“OEM”) distribution channel is one through which Microsoft software is distributed to computer and device manufacturers called OEMs. OEMs customarily pre-install software on the devices they build including, most commonly, a Microsoft Windows operating system.

20. The OEM distribution channel involves sub-channels that supply Microsoft software to different categories of OEMs. Two of these sub-channels are the Commercial OEM channel and the Direct OEM channel.

21. Through the Commercial OEM (“COEM”) channel, Microsoft, through authorized distributors, supplies what is called “system builder” software to small and medium-sized OEMs for pre-installation on devices. This software is required to be individually activated on each device.

22. Through the Direct OEM (“DOEM”) channel, Microsoft directly provides software to large computer manufacturers, such as Dell and Lenovo, for pre-installation on devices. The DOEMs acquire some components associated with the Microsoft software from Microsoft Authorized Replicators (“ARs”).

23. In addition to the OEM channel, Microsoft offers a number of programs through which it provides software to qualified members including the Microsoft Registered Refurbisher Program (“RRP”) and the Microsoft Authorized Refurbisher (“MAR”) program.

24. The Microsoft Refurbisher programs allow members to offer their customers additional value by preinstalling genuine Microsoft software. Members of the Microsoft refurbisher programs are required to affix a Program Certificate of Authenticity (“COA”) on each Refurbished Customer System. Program COAs may not be sold separately from Refurbished Customer Systems.

25. The RRP is for small and medium sized refurbishers that supply computer systems to consumers and businesses through commercial licenses and to educational institutions, non-profit charitable organizations or government programs through citizenship licenses. RRP members must sign a RR Program Agreement, and a Logo License Agreement if they wish to display associated Microsoft logos.

26. The MAR program is for large refurbishers who meet a minimum average threshold of refurbished PCs shipped per month. Refurbishers in the program professionally refurbish desktop and laptop computers and servers with genuine Microsoft software. MAR members must sign a MAR Program License Agreement, and a Logo License Agreement if they wish to display associated Microsoft logos.

D. Product Activation

27. Like many other software developers, Microsoft has implemented a wide-range of initiatives to protect its customers and combat theft and infringement of its intellectual property. One important tool in Microsoft’s anti-piracy protection arsenal is its product activation system, which involves the activation of software through product keys.

28. A Microsoft product key is a 25-character alphanumeric string generated by Microsoft and provided to customers and OEMs that pre-install software on devices to be used to activate the software. Prior to activation, the software remains in an un-activated “trial” state. Through the activation process, customers and, in some cases, OEMs voluntarily contact Microsoft’s activation servers over the Internet and transmit their product keys and other technical information about their device to the servers. The majority of the activations involved in this matter contacted servers that are physically located in Washington.

1 29. The activation process is analogous to the activation of credit cards or mobile
2 phones with a code provided by the financial institution or the mobile carrier. Because
3 Microsoft's copyrighted software is capable of being installed on an unlimited number of
4 computers, abuse of Microsoft activation keys is prevalent and Microsoft relies on the product
5 activation process to detect piracy and protect consumers from the risks of non-genuine
6 software.

7 30. In the OEM, RRP, and MAR channels, each copy of genuine Microsoft software
8 is distributed with a product key unique to that copy of the software—thus, for example, if a
9 customer purchases ten copies of Windows 7, the customer is supplied with ten unique product
10 keys.

11 31. Microsoft software activation works differently in the COEM and DOEM
12 channels. As with RRP, and MARs, COEMs are required to use individual product keys to
13 install software on the computer system. DOEMs, on the other hand, use either a master key to
14 install Windows software (as in the case with Windows 7), or a separate file generated from
15 Microsoft to install Windows software (as in the case with Windows 8) on each device.

16 **E. Microsoft's Use of Cyberforensics to Combat Piracy**

17 32. In order to combat the global threat of software piracy of its software, Microsoft
18 relies on investigative methods that leverage state-of-the-art technology to detect software
19 piracy. Microsoft refers to these methods as "cyberforensics."

20 33. As part of its cyberforensic methods, Microsoft analyzes activation data
21 voluntarily provided by users when they activate Microsoft software, including the IP address
22 from which a given product key is used to activate the software. An IP address is a numerical
23 identifier used to uniquely identify an internet-capable device when the device is connected to
24 the Internet. An IP address is ordinarily assigned to an internet user (whether an individual or
25 an entity) by the user's Internet Service Provider ("ISP").

26 34. Entities charged with managing and administering internet numbering resources,
27 including IP addresses, publish information about IP address assignment and registration in
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publicly-searchable databases. Akin to an IP address “phone book,” these databases can be used to associate each IP address with the individual or entity assigned to use that address. In some cases, the listed individual or entity is actually using the IP address; in other cases, the listed individual or entity is an ISP who has assigned the IP address to one of its customers. Thus, in some instances, the identity of the individual or entity associated with a particular IP address is publicly available; in other instances, the identity of the individual or entity can only be obtained from the ISP assigned to that IP address.

35. Cyberforensics allows Microsoft to analyze billions of activations of Microsoft software and identify activation patterns and characteristics that make it more likely than not that the IP address associated with the activations is an address through which pirated software is being activated.

F. Defendants’ Infringing Conduct

36. Defendants’ website is replete with representations that they are a legitimate supplier of software including an express representation that they are “a Microsoft Authorized Education Reseller” (AER) offering academic pricing: “Microsoft Academic Volume Licensing provides schools and education institutions with simple, flexible & volume-based pricing.” Defendants’ membership in the Microsoft’s AER program lapsed January 2016.

37. Defendants’ website also displays the Microsoft Marks without a license or other authorization from Microsoft. This unauthorized use of the world-famous Microsoft Marks is designed to add credibility to Defendants’ representations that they are a genuine supplier of Microsoft software and to confuse consumers about the source, sponsorship, affiliation and approval of the software and/or related components by Microsoft.

38. Microsoft’s cyberforensics have identified nearly four thousand software activations originating from the IP Addresses, which, on information and belief, are being used by the Defendants in furtherance of the unlawful conduct alleged herein. Thousands of these activations, the vast majority of which contacted Microsoft’s servers in Washington, have characteristics that, on information and belief, demonstrate that Defendants are using the IP

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1 Addresses to activate pirated software. Specifically, the cyberforensics show that between
2 2012 and 2016, Defendants have activated copies of Microsoft software on over a thousand
3 computers and servers using product keys that have some or all of the following characteristics:

- 4 a. Product keys used more times than authorized by the applicable software
5 license or a key that is blocked by Microsoft;
- 6 b. Product keys used to activate software outside of the region for which it
7 was intended;
- 8 c. Product keys restricted for use and distribution to end users by members
9 of the RRP or MAR programs.

10 39. On information and belief, each of these activations constitutes the unauthorized
11 copying and use of Microsoft software, in violation of Microsoft's software licenses and its
12 intellectual property rights.

13 40. On information and belief, Microsoft has been harmed by Defendants'
14 advertising activities, including the unauthorized use of Microsoft's marks to describe the items
15 that Defendants are distributing.

16 41. On information and belief, Defendants have committed and continue to commit
17 acts of copyright and trademark infringement against Microsoft. On information and belief, at
18 a minimum, Defendants acted with willful blindness to, or in reckless disregard of, Microsoft's
19 registered copyrights and the Microsoft Marks. Defendants either knew or should have known
20 they were activating or attempting to activate unlicensed software because, on information and
21 belief, Defendants purchased or acquired the software activation keys outside of authorized
22 distribution channels and/or received hundreds of fail notices from their attempts at activating
23 abused, out-of-region, or restricted for use software.

24 42. On information and belief, Defendants have been and continues to be involved
25 in installing, offering, and/or distributing counterfeit and infringing copies of Microsoft's
26 software and/or related components to unidentified persons or entities.

43. To further verify that Defendants have engaged in piracy of Microsoft software, Microsoft, through a third party investigator, purchased a refurbished (i.e. “Aventis Systems Certified Reconditioned”) computer system from Defendants in or about March 2016. The computer system, which was originally manufactured by Dell, was hard-disk loaded with infringing Windows 7 Professional software installed and activated with a product key distributed to Hewlett Packard for use only with a HP device. Cybeforensics further show that Defendants used this product key on three separate computer systems, including the computer system purchased by the third party investigator. Defendants also sold the computer system with a tampered COA affixed to it.

V. CAUSES OF ACTION

First Claim

Copyright Infringement - 17 U.S.C. § 501 *et seq.* (Against All Defendants)

44. Microsoft specifically realleges and incorporates by reference each and every allegation contained in the Complaint as though fully set forth in this Claim.

45. Microsoft is the sole owner of software described above and of the corresponding copyrights and Certificates of Registration.

46. Defendants have infringed Microsoft’s copyrights by reproducing and/or distributing Microsoft software in the United States of America without approval or authorization from Microsoft.

47. Defendants represent on <http://www.aventissystems.com> that they sell genuine Microsoft software through express statements, use of Microsoft’s Marks, and Defendants’ false representation that that they are “a Microsoft Authorized Education Reseller.”

48. At a minimum, Defendants acted with willful blindness to, or in reckless disregard of, Microsoft’s registered copyrights.

49. As a result of Defendants’ wrongful conduct, Microsoft is entitled to recover its actual damages and Defendants’ profits attributable to the infringement. Alternatively, Microsoft is entitled to statutory damages under 17 U.S.C. § 504(c).

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50. The award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

51. Microsoft is further entitled to injunctive relief, including an order impounding all infringing materials and directing Defendants to stop representing or implying that they are members of Microsoft's AER program and that they are offering licensed Microsoft software. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) Microsoft's copyrights are unique and valuable property which have no readily determinable market value; (b) Defendants' infringement harms Microsoft such that Microsoft could not be made whole by any monetary award; and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

Second Claim
Trademark Infringement – 15 U.S.C. § 1114
(Against All Defendants)

52. Microsoft specifically realleges and incorporates by reference each and every allegation contained in the Complaint as though fully set forth in this Claim.

53. Defendants' activities constitute infringement of Microsoft's federally registered the Microsoft Marks with the registration numbers listed above.

54. Microsoft advertises, markets, distributes, and licenses its software and related components under the Microsoft Marks described above and uses these Marks to distinguish Microsoft's products from the software and related items of others in the same or related fields.

55. Because of Microsoft's long, continuous, and exclusive use of the Microsoft Marks, they have come to mean, and are understood by customers, end users, and the public to signify, software programs and related components or services of Microsoft.

56. The infringing materials that Defendants have and are continuing to advertise, market, install, offer, and distribute are likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.

1 57. Further, Defendants' activities are likely to lead the public to conclude,
2 incorrectly, that the infringing materials that Defendants are advertising, marketing, installing,
3 offering, and/or distributing originate with or are authorized by Microsoft, thereby harming
4 Microsoft, its licensees, and the public.

5 58. At a minimum, Defendants acted with willful blindness to, or in reckless
6 disregard of, their authority to use the Microsoft Marks and the confusion that the use of those
7 Mark would have on consumers as to the source, sponsorship, affiliation or approval by
8 Microsoft of the software and/or related components the Microsoft Marks represent.

9 59. As a result of Defendants' wrongful conduct, Microsoft is entitled to recover its
10 actual damages, Defendants' profits attributable to the infringement, and treble damages and
11 attorney fees pursuant to 15 U.S.C. § 1117 (a) and (b). Alternatively, Microsoft is entitled to
12 statutory damages under 15 U.S.C. § 1117(c).

13 60. Microsoft is further entitled to injunctive relief, including an order compelling
14 the impounding of all infringing materials and directing Defendants to stop representing or
15 implying that they are members of Microsoft's AER program and that they are offering
16 licensed Microsoft software. Microsoft has no adequate remedy at law for Defendants'
17 wrongful conduct because, among other things: (a) the Microsoft Marks are unique and
18 valuable property that have no readily determinable market value; (b) Defendants' infringement
19 constitutes harm to Microsoft's reputation and goodwill such that Microsoft could not be made
20 whole by any monetary award; (c) if Defendants' wrongful conduct is allowed to continue, the
21 public is likely to become further confused, mistaken, or deceived as to the source, origin or
22 authenticity of the infringing materials; and (d) Defendants' wrongful conduct, and the
23 resulting harm to Microsoft, is continuing.

Third Claim

**False Designation of Origin, False Description and Representation of Microsoft
Packaging and Programs– 15 U.S.C. § 1125 *et seq.*
(Against All Defendants)**

61. Microsoft specifically realleges and incorporates by reference each and every allegation contained in the Complaint as though fully set forth in this Claim.

62. Microsoft advertises, markets, distributes, and licenses its software and related components under the Microsoft Marks described above, and uses these Marks to distinguish Microsoft's software and related components from the software or products of others in the same field or related fields.

63. Because of Microsoft's long, continuous, and exclusive use of the Microsoft Marks, they have come to mean, and are understood by customers, end users, and the public to signify, software or services of Microsoft.

64. Microsoft has also designed distinctive and aesthetically pleasing displays, logos, icons, graphic images, and packaging (collectively, "Microsoft visual designs") for its software programs and related components as well as its licensing programs.

65. On information and belief, Defendants' wrongful conduct includes the use of Microsoft's marks, name, and/or imitation visual designs (specifically displays, logos, icons, graphic designs, and/or packaging virtually indistinguishable from Microsoft visual designs) and representation of affiliation with Microsoft's AER program in connection with Defendants' commercial advertising or promotion, including without limitation, in connection with the offering for sale and sale of unlicensed Microsoft software in interstate commerce.

66. Defendants have used, and continue to use, the Microsoft Marks referenced above to compete unfairly with Microsoft and to deceive customers. Upon information and belief, Defendants' wrongful conduct misleads and confuses their customers and the public as to the origin and authenticity of the goods and services advertised, marketed, installed, offered or distributed in connection with Microsoft's marks, name, and imitation visual designs, and wrongfully trades upon Microsoft's goodwill and business reputation. Defendants' conduct

1 constitutes (a) false designation of origin, (b) false or misleading description, and (c) false or
 2 misleading representation that the imitation visual images originate from or are authorized by
 3 Microsoft, all in violation of 15 U.S.C. § 1125(a).

4 67. Defendants' wrongful conduct is likely to continue unless restrained and
 5 enjoined.

6 68. As a result of Defendant's wrongful conduct, Microsoft is entitled to recover its
 7 actual damages, Defendants' profits, and treble damages and attorney fees pursuant to 15
 8 U.S.C. § 1117.

9 69. Further, Microsoft is entitled to injunctive relief, including an order compelling
 10 the impounding of all imitation marks and visual designs being used, advertised, marketed,
 11 installed, offered or distributed by Defendants, and directing Defendants to stop representing or
 12 implying that they are members of Microsoft's AER program and that they are offering
 13 licensed Microsoft software. Microsoft has no adequate remedy at law for Defendants'
 14 wrongful conduct because, among other things: (a) Microsoft's marks, name and visual designs
 15 are unique and valuable property which have no readily-determinable market value; (b)
 16 Defendants' advertising, marketing, installation, or distribution of imitation visual designs
 17 constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary
 18 award; and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is
 19 continuing.

20 **Fourth Claim**
 21 **Unfair or Deceptive Acts or Practices (RCW Chapter 19.86)**
 22 **(Against All Defendants)**

23 70. Microsoft specifically realleges and incorporates by reference each and every
 24 allegation contained in the Complaint as though fully set forth in this Claim.

25 71. Defendants have misled and confused their customers and the public as to the
 26 origin and authenticity of the goods and services they advertised—including without limitation
 27 by promising or implying through advertisements and marketing materials that Defendants are

1 part of Microsoft's AER program and that Defendants sell properly licensed Microsoft
2 software.

3 72. Defendants' conduct constitutes unfair and deceptive acts and practices in the
4 conduct of trade or commerce. Defendants' conduct has the capacity to deceive a substantial
5 portion of the public to whom that conduct is directed because, on information and belief,
6 Defendants' customers believe they are purchasing properly licensed Microsoft software,
7 potentially at discounted prices.

8 73. Defendants' acts and practices are injurious to the public interest because
9 Defendants, in the course of their business, continuously advertised to and solicited the general
10 public throughout the United States to purchase computers from Defendants by expressly or
11 implicitly promising, among other things, that properly licensed Microsoft software was
12 installed on those computers.

13 74. As a direct and proximate result of Defendants' conduct, Microsoft was injured
14 in its business or property, including without limitation (a) reputational injury and loss of
15 business goodwill, and (b) displaced sales of genuine Microsoft software, as a result of the sale
16 of unlicensed Microsoft software.

17 75. Further, Microsoft is entitled to injunctive relief, including an order compelling
18 the impounding of all imitation marks and visual designs being used, advertised, marketed,
19 installed, offered or distributed by Defendants, and directing Defendants to stop representing or
20 implying that they are members of Microsoft's AER program and that they are offering
21 licensed Microsoft software. Microsoft has no adequate remedy at law for Defendants'
22 wrongful conduct because, among other things: (a) Microsoft's marks, name and visual designs
23 are unique and valuable property which have no readily-determinable market value; (b)
24 Defendants' advertising, marketing, installation, or distribution of imitation visual designs
25 constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary
26 award; and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is
27 continuing.

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Fifth Claim
Common Law Unfair Competition
(Against All Defendants)

76. Microsoft specifically realleges and incorporates by reference each and every allegation contained in the Complaint as though fully set forth in this Claim.

77. Microsoft advertises, markets, distributes, and licenses its software and related components under the Microsoft Marks described above, and uses these Marks to distinguish Microsoft's software and related components from the software or products of others in the same field or related fields.

78. Because of Microsoft's long, continuous, and exclusive use of the Microsoft Marks, they have come to mean, and are understood by customers, end users, and the public to signify, software or services of Microsoft.

79. Microsoft has also designed distinctive and aesthetically pleasing displays, logos, icons, graphic images, and packaging (collectively, "Microsoft visual designs") for its software programs and related components.

80. On information and belief, Defendants' wrongful conduct includes falsely representing they are members of Microsoft's AER program and selling infringing materials as genuine Microsoft software approved or authorized by Microsoft.

81. In distributing unlicensed software, Defendants have used Microsoft's name or marks in a way that is likely to deceive, and indeed has deceived, the public.

82. As a direct and proximate result of Defendants' unfair competition, Microsoft was injured in its business or property, including without limitation, (a) reputational injury and loss of business goodwill, and (b) displaced sales of genuine Microsoft software as a result of the sale of unlicensed Microsoft software, in an amount to be proved at trial.

83. Further, Microsoft is entitled to injunctive relief, including an order compelling the impounding of all imitation marks and visual designs being used, advertised, marketed, installed, offered or distributed by Defendants, and directing Defendants to stop representing or implying that they are members of Microsoft's AER program and that they are offering

1 licensed Microsoft software. Microsoft has no adequate remedy at law for Defendants'
 2 wrongful conduct because, among other things: (a) Microsoft's marks, name and visual designs
 3 are unique and valuable property which have no readily-determinable market value; (b)
 4 Defendants' advertising, marketing, installation, or distribution of imitation visual designs
 5 constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary
 6 award; and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is
 7 continuing.

8 **Sixth Claim**
 9 **Imposition of a Constructive Trust**
 10 **(Against All Defendants)**

11 84. Microsoft specifically realleges and incorporates by reference each and every
 12 allegation contained in the Complaint as though fully set forth in this Claim.

13 85. Defendants' conduct constitutes deceptive and wrongful conduct in the nature of
 14 misrepresenting Aventis' status as a member of Microsoft's AER program and selling the
 15 infringing materials as genuine Microsoft software approved or authorized by Microsoft.

16 86. By virtue of Defendants' wrongful conduct, Defendants have illegally received
 17 money and profits that rightfully belong to Microsoft.

18 87. On information and belief, Defendants hold the illegally received money and
 19 profits in the form of bank accounts, real property, or personal property that can be located and
 20 traced. All such money and profits, in whatever form, are held by Defendants as constructive
 21 trustees for Microsoft.

22 **Seventh Claim**
 23 **Accounting**
 24 **(Against All Defendants)**

25 88. Microsoft specifically realleges and incorporates by reference each and every
 26 allegation contained in the Complaint as though fully set forth in this Claim.

27 89. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to
 recover any and all profits of Defendants that are attributable to the acts of infringement.

1 90. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to
2 actual damages or statutory damages sustained by virtue of Defendants' acts of infringement.

3 91. The amount of money due from Defendants to Microsoft is unknown to
4 Microsoft and cannot be ascertained without a detailed accounting by Defendants of the precise
5 number of units of infringing material advertised, marketed, installed, offered or distributed by
6 Defendants.

7 **VI. PRAYER FOR RELIEF**

8 WHEREFORE, Microsoft respectfully prays for the following relief:

9 A. That the Court enter judgment in Microsoft's favor on all claims;

10 B. That the Court restrain and enjoin Defendants, including Aventis' directors,
11 principals, officers, agents, representatives, employees, attorneys, successors and assigns, and
12 all others in active concert or participation with Defendants, from:

13 (i) falsely representing themselves as members of any of Microsoft's
14 licensing programs;

15 (ii) copying or making any other infringing use or infringing distribution of
16 Microsoft's software and other intellectual property including but not limited to the software
17 identified by the Microsoft Marks and Copyright Registration Numbers listed above;

18 (iii) manufacturing, assembling, producing, distributing, offering for
19 distribution, circulating, selling, offering for sale, advertising, importing, promoting, or
20 displaying any Microsoft software or other intellectual property bearing any simulation,
21 reproduction, counterfeit, copy, or colorable imitation of any of Microsoft's registered
22 trademarks, service mark, or copyrights, including, but not limited to, the Trademark, Service
23 Mark, and Copyright Registration Numbers listed above;

24 (iv) using any simulation, reproduction, counterfeit, copy, or colorable
25 imitation of the Microsoft Marks or copyright including, but not limited to the Microsoft Marks
26 and Copyright Registration Numbers listed above, in connection with the manufacture,
27 assembly, production, distribution, offering for distribution, circulation, sale, offering for sale,

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import, advertisement, promotion, or display of any software, component, and/or other item not authorized or licensed by Microsoft;

(v) engaging in any other activity constituting an infringement of any of the Microsoft Marks and/or copyrights, or of Microsoft's rights in, or right to use or to exploit, these trademarks, service marks, and/or copyrights; and

(vi) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities listed above;

C. That the Court enter an order pursuant to 15 U.S.C. § 1116 and 17 U.S.C. § 503 impounding all counterfeit and infringing copies of purported Microsoft software and/or materials bearing any of the Microsoft Marks, and any related item, including business records, that are in Defendants' possession or under their control;

D. That the Court enter an order declaring that Defendants hold in trust, as constructive trustees for the benefit of Microsoft, the illegal profits obtained from their distribution of counterfeit and infringing copies of Microsoft's software, and requiring Defendants to provide Microsoft a full and complete accounting of all amounts due and owing to Microsoft as a result of Defendants' unlawful activities;

E. That Defendants be required to pay all general, special, actual, and statutory damages which Microsoft has sustained, or will sustain, as a consequence of Defendant's unlawful acts, and that such damages be enhanced, doubled, or trebled as provided for by 17 U.S.C. § 504(c), 15 U.S.C. § 1117(b), and RCW 19.86.090;

F. That Defendants be required to pay to Microsoft both the costs of this action and the reasonable attorneys' fees incurred by Microsoft in prosecuting this action, as provided for by 15 U.S.C. § 1117, 17 U.S.C. § 505, and RCW 19.86.090; and

G. That the Court grant Microsoft such other, further, and additional relief as the Court deems just and equitable.

1 DATED this 5th day of August, 2016.

2 DAVIS WRIGHT TREMAINE LLP
3 *Attorneys for Plaintiff Microsoft Corp.*

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5 s/ Zana Z. Bugaighis

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